

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In The Matter of:

CRESTVIEW VILLAGE APARTMENTS LIMITED PARTNERSHIP,

Respondent.

HUDALJ 01-063-CMP
Decided: February 28, 2001

Lillyanne T. Alexander, Esquire
For the Government

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On March 8, 2000, the Secretary of the United States Department of Housing and Urban Development ("Secretary of HUD") through the Departmental Enforcement Center filed a Complaint seeking civil money penalties of \$80,000 against Crestview Village Apartments Limited Partnership ("Respondent"), pursuant to section 537 (c) of the National Housing Act, 12 U.S.C. § 1735f-15(c), and the applicable regulations under 24 C.F.R. Part 30. The Complaint charges that Respondent knowingly and materially failed to timely submit audited annual financial statements to HUD for fiscal years 1995, 1996, and 1997, as required by its Regulatory Agreement with HUD. The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an answer within 15 days of receipt of the Complaint, and that failure to file an answer could result in a default judgment and imposition of the penalty sought. *See* 24 C.F.R. §§ 30.90(b); 26.39. Respondent received a copy of the Complaint on March 16, 2000, but failed to file an answer.

On January 26, 2001, HUD served a Motion for Default Judgment on Respondent. Respondent failed to respond to the Motion. Accordingly, this Default Decision and Order is granted.

Findings of Fact¹

1. Respondent is the owner of Crestview Village Apartments, a multi-family housing project located in Kankakee, Illinois. The property was financed with a loan insured against default by HUD under Section 207/244 of the National Housing Act, 12 U.S.C. §1713. In exchange for receiving the benefits of a loan insured by HUD, Respondent executed a Regulatory Agreement on December 23, 1988. Complaint, ¶ 7.

2. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the project. Paragraph 16(a) of the Regulatory Agreement requires Respondent to provide HUD with an audited financial statement, prepared in accordance with the requirements of HUD, within 60 days after the completion of the fiscal year. Complaint, ¶ 8.

3. The project's fiscal year ends on December 31, therefore, the audited financial statement is due March 1 of the following year. Complaint, ¶ 9.

4. The audited financial statements for fiscal years 1995, 1996, and 1997 were not submitted by Respondent on or before their due dates. Complaint, ¶ 10.

5. Respondent's failure to provide the audited financial statements to HUD on time violates paragraph 16(a) of the Regulatory Agreement. Complaint, ¶ 11.

6. On November 12, 1999, HUD provided Respondent with a written notice ("Notice") that it intended to seek civil money penalties against Respondent because of its failure to submit, in a timely manner, the required audited financial statements for fiscal years 1995, 1996, and 1997. Complaint, ¶ 12.

7. The Notice offered Respondent an opportunity to reply in writing within thirty

¹HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD's Complaint, as well as Respondent's waiver to any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

days of receipt. To date, HUD has not received a written response to the Notice. Complaint, ¶¶ 13-14.

8. HUD's Assistant Secretary for Housing-Federal Housing Commissioner, William C. Apgar ("Assistant Secretary"), reviewed the allegations against Respondent and considered the factors set forth in 24 C.F.R. § 30.80, such as the gravity of Respondent's offense, any history of prior offenses, Respondent's ability to pay a penalty, injury to the public, benefits received Respondent, and deterrence of future violations. After consideration of those factors, the Assistant Secretary determined that, pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45(b), civil penalties totaling \$80,000 were appropriate: \$25,000 for Respondent's failure to timely submit the 1995 statement, and \$27,500 each for Respondent's failure to timely submit both the 1996 and 1997 statements. Complaint, ¶¶ 15-19.

Conclusion and Order

Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c) and its Regulatory Agreement with HUD by failing to furnish HUD in a timely manner, with audited financial reports for fiscal years 1995, 1996, and 1997. After consideration of appropriate factors, HUD issued the Notice, and later, the Complaint seeking an order imposing civil money penalties of \$80,000. *See* 24 C.F.R. §§ 30.80; 30.85. Respondent failed to answer the Complaint, and therefore is in default. *See* 24 C.F.R. §§ 26.37; 26.38; 30.90(b). HUD's filed a Motion for Default Judgment, which was received by this Office on January 26, 2001. Respondent has failed to file a response to the Motion for Default. Pursuant to 24 C.F.R. §§ 30.90, 26.37 and 26.39, it is

ORDERED, that

- (1) the Motion for Default Judgment is *granted*;
- (2) Respondent shall pay to the Secretary of HUD a civil money penalty of \$80,000, which is immediately due and payable by Respondent without further proceedings; and
- (3) This Order shall constitute the final agency action, pursuant to 24 C.F.R. § 26.39.

WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by WILLIAM C. CREGAR, Acting Chief Administrative Law Judge, HUDALJ 00-063-CMP, were sent to the following parties on this 28th day of February, 2001, in the manner indicated:

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